



## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>VAC Chapter Number:</b>	16 VAC 25-75
<b>Regulation Title:</b>	Telecommunications, General, Approach Distances
<b>Action Title:</b>	Promulgate a new unique Virginia (VOSH) regulation and amend the General Industry Standard for Telecommunications regulation 16 VAC 25-90-1910.268 (b)(7)(i)
<b>Date:</b>	December 14, 2004

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of the proposed change is to promulgate a new telecommunications regulation to provide the same degree of protection to telecommunications employees working in similar proximity to power lines as their counterparts under the electrical power generation, transmission and distribution standard, General Industry 16 VAC 25-1910.269 (1) (2) (i).

The extensive use of insulating equipment to cover energized parts in the employee work area should prevent employee upper arms and shoulders from contacting live electrical parts. Further, if every energized part within reach of the employee were insulated, electrical contacts involving other parts of the body, such as the employees head or back would be averted as well.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

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The Safety and Health Codes Board is authorized by Title 40.1-22(5) to: "... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title".

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity".

"However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

The need for this request for proposed rulemaking was made evident to the Department during the investigation of a fatal accident in the Commonwealth. A telecommunications employee was fatally electrocuted when he apparently touched an uninsulated 7200-volt power line with his body. The victim had not put insulating material around the power line, nor was he wearing properly rated insulating gloves. Although the victim was not in compliance with any part of 1910.268(b)(7), the discrepancy between 1910.268(b)(7)(i) and 1910.269(l)(2)(i) was identified during a legal review of the case.

NOTE: At its August 4, 2004 meeting, the Board adopted a change to the construction industry standard for power transmission and distribution workers, which brought 1926.950(c)(1)(i) in line with 1910.269(l)(2)(i). The change to 1926.950(c)(1)(i) was recommended to the Board following a fatal accident that the VOSH Program investigated where a construction electrical transmission employee, who was wearing properly rated insulating gloves and sleeves, was fatally electrocuted when he apparently touched an uninsulated 7600-volt power line with his neck/shoulder. The victim was working on one energized electrical part, and was effectively insulated from it through the use of gloves with sleeves. However, he was not protected from accidental contact with other live electrical parts in the immediate work area.

A Department legal review of federal Occupational Safety and Health Review Commission cases involving facts similar to the above cited fatality found that some federal decisions concluded that no OSHA violation of the original 1926.950(c)(1)(i) occurred as long as employees were wearing the appropriate gloves and sleeves, even though the employees were killed due to contact with other live parts of the power lines. (*J & L Utilities Service Company* (6 OSHC 1225 (1977)); *Sawnee Electric Membership Corporation* (5 OSHC 1059 (1977)); *Utilities Line Construction Company*, 4 OSHC 1681 (1976))

NOTE: The Department's staff has conducted a review of both the general industry and construction industry standards to ensure that there are no other such discrepancies in the regulations.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

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The VOSH Program seeks the amendment of §1910.268(b)(7)(i) and promulgation of a new regulation, to have the Telecommunications Standard track similar provisions in the Electric Power Generation Transmission, and Distribution Standard for General Industry, §1910.269(1)(2)(i). Making the two provisions identical would provide safety protections for telecommunications workers equivalent to those already afforded general industry electrical transmission workers.

The language of the two current General Industry Standards for this exposure are almost identical except for qualifying language in §1910.269(1)(2)(i) that specifies that the wearing of protective gloves and sleeves only qualifies as insulation for the live electrical part upon which the employee is actually working. The effect of this language is that all other nearby live or "hot" electrical parts and power lines in the work area would have to be insulated so an employee could not accidentally contact an energized part or power line with some other uninsulated part of his body, or other conductive object(s).

The similar but less stringent Telecommunications Standard language in §1910.268(b)(7)(i) specifies that the wearing of protective gloves will qualify as insulation for any live electrical part in the area where the employee is working. The effect of this language is that the employee can be exposed to many uninsulated live electrical parts in his work area, but only actually be protected from touching them with his hands (and possibly forearms) through the use of gloves.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

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The only other alternative to amending this regulation is to leave the regulation as it currently is. However, safety protections for telecommunications workers would be less than the safety protections afforded general industry electrical transmission workers although they are performing similar tasks. This would allow telecommunications workers to be exposed to many uninsulated live electrical parts in their work areas. They would only be protected from touching the electrical parts with his hands (and possibly forearms) through the use of gloves.

## Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The amendment of this regulation has no impact on the institution of the family or family stability.